



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.  
ATTORNEY GENERAL

August 8, 1978

Mr. John Bannister  
Executive Secretary  
Oil and Gas Conservation Commission  
1645 West Jefferson  
Phoenix, Arizona 85007

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Re: 78-211 (R77-412)

Dear Mr. Bannister:

You have requested our opinion as to whether the Oil and Gas Conservation Commission has the necessary authority to enter into a plan to locate and drill a geothermal resource on state land. Evidently this project, which would be jointly undertaken with other state and federal agencies, would involve the Commission in the lease of state lands, the search for a likely site and the actual management of the drilling process. The purpose of this undertaking is to evaluate certain areas of state lands for geothermal purposes, and also to test the workability of pertinent regulations of the State Land Department and the State Oil and Gas Conservation Commission. After researching the Commission's statutory authority, we must conclude that the Oil and Gas Conservation Commission does not, at present, have the necessary powers to pursue and manage such an undertaking.

The powers and duties of the Oil and Gas Conservation Commission are contained in A.R.S. § 27-501 et seq. As a legislatively created agency, the Commission has only such power as the statutes confer. Hernandez v. Frohmiller, 68 Ariz. 242, 204 P.2d 854 (1949). It is also true, however, that the authority of an agency includes those implied powers which are reasonable and necessary to carry out the ends of the statutory purpose. See, for example, Pressley v. Industrial Commission, 73 Ariz. 22, 236 P.2d 1011 (1951). While construction may be used to fill in the gaps of the statute, this device must not be used to amend the statute. See Hama Hama Co. v. Shorlines Hearings Board, 85 Wash.2d. 441, 536 P.2d 157 (1975). It is against this backdrop which we must examine the powers conferred upon the Oil and Gas Conservation Commission to see if the agency has the necessary authority to participate in the project above described.

Office of the  
Attorney General  
Phoenix, Arizona

Mr. John Bannister  
August 8, 1978  
Page Two

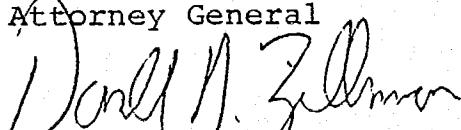
A review of the Commission's statutory authority reveals no specific provisions which would allow the agency to test its regulations relating to discovery and development of geothermal resources by actually undertaking a development project itself. The enabling legislation grants numerous regulatory powers to the agency, but does not grant it authority to develop and manage geothermal projects. In fact, the Commission does not even have the authority to lease, acquire, hold and dispose of real property.

Neither do we find that the power to proceed with the contemplated project can be implied from the enabling legislation. The Commission may certainly use other means to gather information as to the workability of its regulatory scheme, such as conduct investigations and coordinate informational inquiries with other state agencies having similar interests. However, we think that the power to not enter into leases and conduct a drilling operation may not be reasonably or necessarily implied from the authority specifically granted to the Commission. Such a construction amounts to an amendment of the statutory design rather than a logical interpretation of its provisions. See Pressley and Hama Hama Co., supra.

If I can be of any further assistance to you,  
please let me know.

Sincerely,

JOHN A. LASOTA, JR.  
Attorney General

  
DONALD N. ZILLMAN  
Special Assistant  
Attorney General

DNZ:eb